North Carolina Supreme Court

SPRING TERM, 1959

JAMES M. WILLARD

v.

P. T. Huffman, Individually and
P. T. HUFFMAN, TRANSFER, INC.

(Filed 12 June, 1959.)

APPEAL by defendants from *Crissman, J.*, January Civil Term 1959 of GUILFORD (Greensboro Division).

This is a civil action instituted by the plaintiff to recover for his alleged wrongful discharge by the defendants in violation of G.S. 95-81.

This case, on the same pleadings and on substantially the same evidence, was before this Court at the Fall Term 1957 and the opinion of the Court is reported in *Willard v. Huffman*, 247 N.C. 523, 101 S.E. 2d 373.

The facts will not be restated herein except as may be necessary to an understanding of the appeal.

Issues were submitted to the jury and answered as follows:

". . Was the plaintiff discharged by the defendants because he did not abstain or refrain from membership in a labor union or labor organization? Answer: Yes.

"2. If so, what amount of damages, if any, did the plaintiff sustain by being so discharged? Answer: $1,000.00."

Judgment was entered on the verdict and the defenants appeal, assigning error.

Robert S. Cahoon for plaintiff, appellee.

McLendon, Brimm, Holderness & Brooks for defendants appellant.

DENNY J. The determinative question posed on this appeal is whether or not the courts of North Carolina have jurisdiction to adjudicate a claim for damages resulting from an unfair ~~labor~~ practice, under the provisions of our Right to Work Act, Chapter 328, Session Laws of 1947, codified as General Statutes of North Carolina, Chapter 95, Sections 78 through 84, where the employer is engaged in a business that affects interstate commerce.

While the previous appeal was pending in this Court, the defendant appellants filed a motion to remand to the Superior Court of Guilford County for the purpose of determining the identical question now presented. We granted a new trial for errors committed in the courts' charge to the jury, and pointed out that since a new trial was being granted, the defendants could raise the question of jurisdiction in the trial court, as requested in their motion to remand. Hence, we did not rule on the jurisdictional question now before us. *Willard v. Huffman, supra.*

The plaintiff was discharged from his employment with defendants on 18 January 1956, and it has been duly determined by the jury in the trial below that the discharge was on the ground prohibited, by G.S. 95-81, which reads as follows: "No person shall be required by an employer to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment."

The section of our Right to Work Act on which the plaintiff bottoms his action for damages is G.S. 95-83, which provides: "Any person who may be denied employment or be deprived of continuation of his employment in violation of Sections 95-80, 95-81 and 95-82 or of one or more of such sections, shall be entitled to recover from such employer and from any other person, firm, corporation, or association acting in concert with him by appropriate action in the courts of this State such damages

as he may have sustained by reason of such denial or deprivation of employment."

Our Right to Work Act was upheld by this Court in *S. v Whitaker*, 228 N.C. 352, 45 S.E. 2d 860. *Certiorari* was allowed by the Supreme Court of the United States and the case was heard and decided with a Nebraska case, *Lincoln Fed. L. U. v. Northwestern I. & M. Co.*, and the decision of this Court was upheld. See *Whitaker, et al, v. State of North Carolina*, 335 U.S.525, 93 L. Ed. 212, 6 A.L.R., 2d 473.

On 19 January 1956, the day after his discharge, the plaintiff herein filed a charge against the corporate defendant with the National Labor Relations Board (hereinafter referred to as NLRB) for his alleged wrongful discharge in violation of Section 158 (a), subsections (1) and (3) of the National Labor Relations Act, asserting that its unfair labor practices were unfair labor practices affecting commerce within the meaning of the Act.

It appears from the record that on the same date, 19 January 1956, the NLRB informed the corporate defendant of the charges that had been filed against it and requested the defendant to fill out a questionnaire on "commerce data." According to this questionnaire, the defendant had done a dollar volume of business during the year preceding that date, of approximately $100,000, twenty per cent of which involves interstate movements.

Prior to the time of filing the aforesaid charges with the NLRB, the Board had adopted certain jurisdictional criteria which determined whether or not it would accept jurisdiction in unfair labor practice and representation cases. Under the rules in force and effect at the time James M. Willard filed charges against the employer, the Board accepted jurisdiction in unfair labor practice cases involving trucking companies operating interstate and intrastate, only if the interstate revenue amounted to $100,000, or if the total of interstate and "interlining" revenue amounted to $100,000.

Under date of 2 March 1956 the plaintiff was notified by the NLRB that it was refusing to issue complaint in the

case because "further proceedings are not warranted inasmuch as the operations of the employer do not appear to meet the required standards to warrant the Board's exercise of its jurisdiction in this matter."

None of the corporate defendant's trucks operate across State lines; the "interstate" aspects of its business coming from "interline" operations that is, where cargo is transferred by the corporate defendant to another carrier who carriers the cargo out of the State.

In the trial below, the court, in the absence of the jury, heard testimony without objection as to the character of the corporate defendant's business. Defendant P. T. Huffman testified that the company's gross income from the transportation of freight in 1955 was $119,334.44, eighteen per cent of that amount being in interstate commerce; that in 1956 its gross receipts from that source were $110,158.83, of which amount 31.1 per cent was in interstate commerce. The trial judge declined to make any findings of fact or conclusions of law relative to the interstate aspect of the corporate defendant's business. The defendants excepted to the refusal of the court to find facts and make its conclusions of law in this respect.

It is obvious that the corporate appellant was not engaged in interstate commerce as such on 18 January 1956. However, if its operations were such as to affect commerce, the Labor Management Relations Act applies. USCA, Title 29, section 142, provides as follows: "(1) The term 'industry affecting commerce' means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce."

In light of the rulings in *Guss v. Utah Labor Relations Board*, 353 U.S. 1, 1 L. Ed. 2d 601, *Amalgamated Meat Cutters v. Fairlawn Meats*, 353 U.S. 20, 1 L. Ed. 2d 613, and similar decisions, it would seem to be clear that the corporate defendant's interline trasnportation of frieght did affect interstate commerce. Even so, the volume of its business in interstate commerce fell far below that required by the NLRB before it will exercise jurisdiction in such cases.